आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.1742/Chny/2024**

निर्धारण वर्ष **/Assessment Years: 2011-12**

Titan Company Limited, **No.3, SIPCOT Industrial Complex,** **Hosur, Krishnagiri,** **Tamil Nadu-635126** **[PAN: AAACT5131A]**	**Assistant Commissioner of Income Tax,** **LTU-2,** **Chennai**
(अपीलार्थी/Appellant)	**(प्रत्यर्थी/Respondent)**
अपीलार्थी की ओर से/ Assessee by :	Shri Abhay Kumar, C.A
प्रत्यर्थी की ओर से /Revenue by :	Ms.Komali Krishna, CIT
सुनवाई की तारीख/Date of Hearing :	10.09.2024
घोषणा की तारीख /Date of Pronouncement :	04.12.2024

आदेश / O R D E R

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2024-25/1064288529(1) dated 23.04.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment year 2011-12. Through the aforesaid appeal the assesse has challenged order u/s 250 dated 23.04.2024 passed by NFAC, Delhi.

2.0 The first issue raised by the assessee vide ground of appeal no.1 is a legal ground challenging the very validity of reopening made u/s 147 r.w.s 148 of the case. The Ld. Counsel for the assessee informed that the Ld. AO had initiated u/s 147 proceedings for two reasons firstly that as per form 10CCB for the new undertaking, established by the assessee in Pant Nagar district of Uttranchal State, a claim of Rs. 3,72,05,815/- was made u/s 80C(2)(a)(ii) was made. The new undertaking commenced its operations w.e.f 29.03.2010 and the same being initial one the assessee was entitled to claim deduction u/s 80IC from AY-2010-11. The impugned entity had incurred a loss of Rs. 2,12,94,977/- in previous year 2009-10. It was noted that while computing deduction u/s 80IC for 2011-12 the impugned loss was omitted to be set off before allowing the said deductions. Secondly, the Ld. AO noted that the assessee had wrongly claimed bad debts deduction of Rs. 29,52,60,000/-. The Ld. Counsel argued that the Ld. CIT(A) held that the reopening was bad in law as far as the second point of claim of bad debts deduction of Rs. 29,52,60,000/- was concerned. This view was taken as the Ld. CIT(A) noted that the matter of claim of bad debts was enquired and analyzed by the Ld. AO during the original proceedings and therefore the reopening was a case of mere change of opinion which is not permissible in law. On the second issue Ld. CIT(A) held that

reopening was a valid action as per law. As regards the first issue, the Ld. Counsel argued that the view taken by Ld. CIT(A) is not correct and that he has failed to appreciate the facts in correct perspective. The appellant maintained that reopening was done in view of a fact which was already on record of the AO and hence the same was bad in law. It was contended that the reopening alluded a clear case of change of opinion. Reliance was also placed upon the decision of Hon'ble Supreme Court in the case of Kelvinator India Ltd 320 ITR 561 and of Hon'ble Jurisdictional High Court in case of IDFC Limited 155 Taxman.com 602. The Ld. DR placed reliance upon the decision of Ld. AO and Ld. CIT(A) and argued that no interference is required now at this stage.

3.0 We have heard the rival submissions in the light of material available on records. As regards the controversy at hand, it is seen that the Ld. CIT(A) has extensively analyzed the issue in para 6.1 on page 12 to para 6.11 on page 25 of his order. It is seen that the appellant has contested on several grounds like reopening done on material and facts which were already available with the Ld. AO during original proceedings, change of opinion, applicability of first proviso to section 147 etc. The order of the Ld. First Appellate Authority shows that he has comprehensively analyzed various facets of the controversy and concluded that the initiation of proceedings u/s 147 in appellant's case is

based upon correct understanding and appreciation of the facts of the case viz a viz contemporaneous statute. In support its decision the Ld. CIT(A) has also relied upon the decision of Hon'ble ITAT Mumbai in the case Hercules Hoist Ltd as it 35 Taxman.com 592 which was reportedly given on identical facts. Accordingly we are of the view that no interference is required to be made to the decision of Ld.CIT(A). **Accordingly, the ground of appeal number-1 raised by the assessee challenging the legality of reopening u/s 147 is dismissed.**

4.0 The next issue raised vide ground of appeal number 2 is regarding the action of Ld CIT (A) in confirming the set off of loss u/s 80 IC in pant nagar unit of Rs 2.12 crores of AY 2010-11 with the income of the said init in AY 2011-12 . The Ld counsel for the assessee contended that impugned loss u/s 80 IC in pant nagar unit of Rs 2.12 crores of AY 2010-11 was already set off with the profit of the non 80 IC unit in AY 2011-12. For the purposes of clarity the relevant part of order of LD CIT(A) is reproduced hereunder :-

"…..7.2 Having carefully examined the appellant's submissions and the impugned re-assessment order dated 27.12.2017 on the above issue, it is noted that during the year the appellant had claimed a deduction of Rs. 3,72,05,815/- u/s 801C(2)(a) (ii) of the Act for its newly established undertaking in a notified area of Pantnagar, Uttaranchal. The new undertaking had commenced its operation w.e.f 29.03.201 0, thus, AY 2010-11 was the initial assessment year. During FY 2009-10 (AY 2010-11), the said undertaking had incurred a loss of Rs. 2,12,94,977/-. The appellant in its submissions has stated that the said loss of Rs. 2,12,94,977/- was already set off by the appellant against the profits from other than 801C units in the same assessment year i.e. AY 2010-11 and that hence there was no carry forward of the loss to the subsequent year and hence there was no question of any further set off in the AY 2011-12. The appellant in its submissions filed on 18.03.2024 stated that during the

AY 2010-11, total income declared was Rs. 233,03,09,786/- which included loss of Rs.2,12,94,977/- from 801C unit (Pantnagar).
Thus, the primary issue to be decided in this ground is whether or not the AO was correct in notionally carrying forward and setting off the loss of 801C eligible Pantnagar unit for initial AY 2010-11 against the profits of the same unit in AY 2011-12 to arrive at the quantum of deduction allowable u/s 801C for the AY 2011-12.

7.3 It is noted that in the instant case, AY 2010-11 was, undisputedly, the initial assessment year w.r.t the Pantnagar unit. Therefore, for the purposes of determining the quantum of deduction u/s 801C for the AY 2011-12 under consideration, being the assessment year immediately succeeding the initial assessment year, provisions of section 801A(5) r.w.s. 80lC(7) are clearly applicable. The relevant provisions laid down in Section 80IA(5) of the Act are reproduced below for clarity:

[5] Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section [1] apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

If the contention of the appellant that as the concerned loss of eligible unit has already been set off against profits of non-eligible units in the AY 2010-11 itself in accordance with provisions of section 70 and that hence there is no unabsorbed loss left to be carried forward to AY 2011-12 for set off is accepted, it will render the above non obstante provisions of section 801A(5), providing the eligible unit to be deemed as the only source of income of the assessee, as nugatory and therefore any such interpretation is bound to be rejected as the same cannot be the intent of the legislation. When the assumption is that the assessee has the eligible business as the only source of income since the initial AY, one has to assume there could not be any set off of any loss of the eligible business against any other source which is deemed not in existence by the legal fiction created in Sub-section (5) of Section 801A.

7.4 It is further noted that the appellant in its submissions filed before the AO, as reproduced in the impugned reassessment order, had also placed reliance upon the judgment given by the Hon'ble Jurisdictional Madras High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. vs. ACIT (340 ITR 477) dated 11.03.2010. Subsequently, SLP against the above judgment of the Hon'ble Madras High Court was also dismissed by the Hon'ble Supreme Court on 05.09.2016 (76 taxmann.com 176). The said judgment is found followed by Hon'ble Madras High Court in its many subsequent decisions as well on this issue.

1.4.1 It is however, noted that in this judgment given by Hon'ble Madras High Court, it was held that the losses in year earlier to initial assessment year already

absorbed against profit of other business cannot be notionally brought forward and set off against profits of eligible business as no such mandato is in section 80-A(5).
Thus, the said judgment does not say that the loss of the initial assessment year or the subsequent years cannot be notionally brought forward and set off against profits of eligible unit. It only says that the losses set of prior to the initial AY cannot be notionally Brought Forward. Whereas, in the instant case the loss in question pertained to the Initial AY i.e. AY 2010-11 only and not to any year prior to initial AY and therefore, the provisions of section 80IA(5) r.w.s, 80IC(7) are very much attracted in this case. Accordingly, the loss of AY 2010-11 in question has to be notionally carried forward to AY 2011-12 and notionally set off against the current year profits of the same Pantnagar unit to arrive at the amount of profits deductible u/s 80IC even though the actual set off of the loss in question was already effected in the AY 2010-11 itself as per provisions of section 70. Thus, on the facts of the instant case, this judgment of the Hon'ble jurisdictional High Court rather goes against the appellant and supports the stand taken by the AO.

7.4.2 The following remarks of Hon'ble Madras High Court in its judgment, dated 21.01.2015, in the case of CIT Vs. Mohan Breweries & Distilleries Ltd. in Tax Appeal no. 591 of 2014, further help to clarify the purport of section 801A(5) in unambiguous terms:

The important factors are to be noted in sub-section (5) and they are as under :

"(1) t starts with a non obstante clause which means it overrides all the provisions of the Act and other provisions are to be ignored ;
(2) It is for the purpose of determining the quantum of deduction ;
(3) For the assessment year immediately succeeding the initial assessment year
(4) It is a deeming provision;
(s) Fiction created that the eligible business is the only source of income; and (6) During the previous year relevant to the initial assessment year and every subsequent assessment year."

From a reading of the above, it is clear that the eligible business were the only source of income, during the previous year relevant to the initial assessment year and every subsequent assessment years. When the assessee exercises the option, the only losses of the years beginning from initial assessment year alone are to be brought forward and no losses of earlier years which were already set off against the income of the assessee. Looking forward to a period of ten years from the initial assessment is contemplated. It does not allow the Revenue to look backward and find out if there is any loss of earlier years and bring forward notionally even though the same were set off against other income of the assessee and the set off against the current income of the eligible business. Once

7.5 This interpretation is also in accordance with the clarification provided in the explanatory memorandum issued vide CBDT Circular No. 281 dated 22.09.1980, while explaining the object of introduction of similar provisions in section 80I by the Finance Act, 1980 (section 80I(6) is pari materia to section 80IA(5)], as discussed in following paragraphs.

7.6 The appellant in its submissions dated 12.03.2024 has further relied upon the decision of the Hon'ble ITAT, Chennai in the case of ACIT Vs. TVS Motor Company Ltd. (ITA No. 1782/Chny/2012) (Order dated 13.04.2022) whereby the Tribunal allowed the claim of the assessee to provide the set off of loss of eligible unit from non-eligible unit/taxable unit as per the scheme of provisions of Act providing that the income/loss from various sources ie. eligible units and non-eligible units, under the same head are to be aggregated in accordance with provisions of section 70 of the Act to arrive at the Gross Total Income before allowance of any deduction under chapter VIA.

7.6.1 Having gone through the said decision, it is noted that in that case the issue before the Tribunal was whether the loss incurred from an 801C eligible unit can be allowed to set off against the profits accrued to the assessee from other non-eligible unit. Thus, the said case law decides the set off of loss of eligible unit with profits of other units in the year of loss itself in accordance with provisions of section 70 & 71 [Refer para 23 of the said decision] and the issue of notional carry forward and set off the loss to subsequent years, which is involved in the instant appeal of the appellant, has not been decided by the Tribunal as this question was not before it. In the said case, the assessment year under consideration was the year of incurring of the loss in the eligible unit, which corresponds to AY 2010-11 in the appellant's case, and not any subsequent year, which is AY 2011-12 in the instant appeal. Hence, the said decision of Hon'ble jurisdictional Tribunal is found to be not relevant to decide the issue involved in the instant appeal and therefore, the reliance placed by the appellant thereon is misplaced.

7.6.2 It is further noted that in the aforesaid TVS Motor case, though Hon'ble ITAT has not specifically discussed the issue of notional carry forward and set-off in the Succeeding year(s), however, the Hon'ble ITAT has upheld the order of CIT(A) wherein the CIT(A), inter alia, had directed the AO to carry forward and setoff the losses of the eligible unit from the profit of the eligible unit in the subsequent years, even though the same were simultaneously allowed to be actually setoff against the profits of the other unit in the current year itself, in accordance with the clarification provided in Explanatory memorandum to Finance Act, 1980 issued vide CBDT Circular No. 281 dated 22.09.1980. The relevant extract of the order dated 13.04.2022 of the Hon'ble ITAT Chennai, wherein the judgement of the CIT(A) has been incorporated, is reproduced below for reference:

10.2.1. The issue can be viewed from another angle. The provisions of Section 80-IC provide for deduction in respect of certain undertakings or enterprises in certain special category states such as Himachal Pradesh, Uttaranchal, Sikkim and North Eastern states. The benefit available under the section is not in the nature of any exemption. In the instant case, the profits and gains derived by the Himachal unit is not exempt under Chapter III but are eligible for deduction under Chapter VI-A. Therefore, the profit or loss of the above undertaking, as the case may be, is to be taken into account for the purpose of computing gross total income of the assessee ifi view of sub-Section (I) of sec. 80-IC The appellant is eligible for set off of loss of the Himachal unit against profits of other units as per sec 70(1) of the Act. Otherwise, the gross total income of the appellant cannot be computed. However, the appellant was

not eligible for any deduction because there was loss in the Himachal unit. The appellant has also not claimed any such deduction. The above fact, however, does not postulate that the loss of Himachal unit cannot be taken into u/s 80-IC in the subsequent years is to be computed after adjusting the losses of this unit as envisaged in sec. 80-IC(7) read with sec.80-IA (5) of the Act, which treats the eligible business as the only-source of the assessee. Reference may be made to the Circular No.281, dated 22.09. 1980 (131 ITR St 23) which explained the object of introduction of section 80-1 by the Finance(No. 2) Act, 1980 where similar provisions are enshrined. The relevant part is reproduced for ready reference and clarity:

"Deduction in respect of profits and gains from industrial undertakings, etc established after a certain date - New Section 80-1.....
9.4.....
(3) In computing the quantum of "tax holiday;^ profits in all cases, taxable income derived from the new industrial units, etc., will be determined as if Such unit were an independent unit owned by an assessee who does not have any other source of income. In the result, the losses, depreciation and investment allowance of earlier years in respect of the new industrial undertaking, ship or approval hotel will be taken into account in determining the quantum of deduction admissible under the new section 80-1 even though they may actually have been set off against the profits of the assessee from other sources..."

In view of the above factual and legal positions, I arm of the considered opinion that the claim of the appellant for set off of the loss of Himachal Unit against the profit of other units is in accordance with law and hence the ground is allowed. However, the AO is directed to carry forward and set off the losses of the unit from the profit of the unit in subsequent year(s).

It is noted that in the instant case the AO in the impugned re-assessment order dated 27.12.2017 has also observed that the losses incurred by the appellant w.r.t Pantnagar Unit in initial AY 2010-11 should be carry forwarded and set-off against the profit earned by the same unit in subsequent year i.e. AY 2011-12 for computing the quantum of deduction under section 80lC of the Act allowable for the Ay 2011-12. Thus, the decision of the Hon'ble jurisdictional ITAT in the TVS Motor Company case relied upon by the appellant rather goes against the appellant and in fact supports the stand taken by the AO in the impugned assessment order in the instant case.

7.7 The appellant in its submissions dated 12.03.2024 has further relied upon the paragraphs 5.1 & 5.2 of the CBDT Circular No. 07/DV/2013/(File No. 279/Misc/M-116/2012-IT) dated 16.07.2013 which read as under:

"5.1 All income for the purposes of computation of total income is to be classified under the following heads of income and computed in accordance with the provisions of Chapter IVof the Act-

- *Salaries*
- *Income from house property*
- *Profits and gains of business and profession*
- *Capital gains*
- *Income from other sources*

5.2 The income computed under various heads of income in accordance with the provisions of Chapter IV of the IT Act shall be aggregated in accordance with the provisions of Chapter VI of the IT Act, 1961. This means that first the income/loss from various sources i.e. eligible and ineligible units, under the same head are aggregated in accordance with the provisions of section 70 of the Act.

Thereafter, the income from one ahead is aggregated with the income or loss of the other head in accordance with the provisions of section 71 of the Act. If after giving effect to the provisions of sections 70 and 71 of the Act there is any income (where there is no brought forward loss to be set off in accordance with the provisions of section 72 of the Act) and the same is eligible for deduction in accordance with the provisions of Chapter VI-A or sections 10A, 10B etc. of the Act, the same shall be allowed in computing the total income of the assessee."

On perusal of the said circular, it is noted that the said circular is in the context of Section 10A/10B of the Act. It does not discuss the implications of the deeming provisions laid down in the Section 80 IA(5) of the Act as the same is not applicable for the purposes of determining the deduction allowable under section 10A/10B in the absence of any provision pari mareia to section 80IA(5) in section 10A/10B and hence is not relevant to decide the issue at hand of NOTIONAL carry forward & set off as per section 801A(5).

7.7.1 In the instant case, even if set off of loss of Rs. 2,12,94,977 in the initial year i.e AY 2010-11 against the profits from other units is found to be correct in view of provisions of section 70, ratio of CBDT Circular dated 16.07.2013 and the judgment given by the Hon'ble ITAT, Chennai in the case of ACIT VS. TVS Motor Company Ltd. (supra) and in view of the fact that the deeming fiction created by section 80IA(5) is applicable only for the limited purpose of determining the quantum of deduction for the AY succeeding the initial AY or any subsequent AY, STILL in AY 2011-12, notional carry forward & set off of the loss of the AY 2010-11, being the loss of the initial AY and hence explicitly covered within the scope of section 80IA(5), is to be considered as per provisions of Section 80IC(7) r.w.s 80IA(5) of the Act which starts with a non obstante clause and treats the eligible business as the only source of income of the appellant since the initial AY. In the case of ACIT vs. TVs Motor Company Ltd (supra), the issue was limited to allowability of set-off of loss of 80IC unit with non-80IC unit in the year of occurrence of loss which is not disputed in the impugned re-assessment order. In the instant appeal, the issue is the notional carry forward of the loss of 80IC unit of AY 2010-11 (the initial AY) to the subsequent year I.e. AY 2011-12 and its notional

set-off in accordance with the provisions laid down in the Section 80IC(7) r.w.s 8OIA(5) of the Act.

7.8 Reliance is also placed on the decision of the Hon'ble Special Bench of ITAT, Ahmedabad deciding this issue in favour of the revenue in the case of ACIT Vs Goldmine Shares And Finance Pvt. Ltd., dated 30 April, 2008, [2008] 113 ITD 209 (AHD), (2008] 302 ITR 208 (AHD), (2008)116 TTJ (AHD) 705. The relevant part of the judgment is extracted below:

"60. ... Therefore though losses were set off against other sources income, they are to assumed as not set off in absence of existence of another source and for computing the profit and gains for the purposes of determination of the quantum of deduction one has to once again notionally bring back already set off losses, etc. and set off the same against the profits and gains in a year in the deduction is claimed. Section 80-IA(5) of the Act seeks to regard the eligible unit as a separate source of income so as to separately determine the carry forward and set off of losses in the hands of that unit. Such an interpretation is not in our opinion contrary to the scheme of the Act whereby the aggregate profits and losses of all units owned by the assessee are pooled together and taxed in the hands of the assessee, if we keep in mind that the object of the fiction is only for determining the quantum of deduction and nothing beyond.

It is pertinent to mention here that the above findings were arrived at by the Hon'ble Special Bench after considering & discussing a large no. of conflicting decisions on this issue, including the judgment of Hon'ble Rajasthan High Court in the case of CIT vs. Mewar Oil and General Mills Ltd. (No.1) [2004] 271 ITR 311 which has been relied upon by the appellant in its submissions before the AO.

7.9 In view of the above comprehensive discussions, I find no infirmity in the action of the AO in making the addition of Rs. 2,12,94,94,977/- on the above issue in the impugned re-assessment order dated 27.12.2017 by reducing the quantum of deduction allowable u/s 80IC for AY 2011-12 by the said amount…"

4.1 The Ld counsel for appellant assessee has, relying upon the circular number 07/DV/2013 (File no. 279/misc/M-116/2012-IT) dated 16.07/2013 of CBDT , argued that the Ld CIT(A) has misinterpreted the same. The Ld Counsel also placed reliance upon the decision of Hon'ble Rajasthan High Court in case of merwar oil and general mills ltd. 271ITR 31 and of Hon'ble Madras High Court in velayudhaswamy spinnings mills

p ltd 38DTR 57 . The Ld. DR vehemently relied upon the order of the authorities below and insisted that no interference required to be made.

4.2 We have heard the rival submissions in the light of material available on records. We have noted that the Ld. First Appellate Authority has extensively analyzed the issue from page 27 to 34 of his order. It is seen that all the arguments raised by the appellant, inter-alia, including the contemporaneous provisions of the statute governing section 80IC, CBTD circular number 279 supra, decision of Hon'ble Jurisdictional High Court in the case of velayudhaswamy spinnings mills p ltd 38DTR 57 etc have been vividly analyzed. The Ld. CIT(A) has proceeded to examine the matter in the light of decision of Hon'ble Madras High Court in the Mohan Breweries and Distillery Limited in Tax appeal no. 591 of 2014 to strengthen his arguments of correctness of AO's decision. The Ld. CIT(A) also relied upon the decision of Hon'ble Special Bench of ITAT in the case of Gold mine shares and finance pvt ltd 113 ITD 209 in support of his decision. He has held that the decision of merwar oil and general mills ltd. 271ITR 31 supra was considered by the Hon'ble Special Bench above. Accordingly we are of the view that no interference is required to be made to the decision of Ld.CIT(A) at this stage. The action of the Ld. CIT(A) in confirming the

addition made by the Ld. AO is sustained. **Accordingly, the ground of appeal number-2 raised by the assessee is also dismissed.**

5.0 The next issue raised by the assessee vide ground of appeal number.3 is regarding denial of its claim of write off of advance given to its overseas AE Titan International Holdings BV amounting to Rs. 29,52,62,000/- u/s 37 r.w.s. 28(i) of the act. As per brief factual matrix of the case the assessee had granted foreign currency loan to its overseas AE. The loans advanced were reportedly utilized for equity investment in other overseas good companies or to meet sundry expenses. It was informed that the overseas entities incurring losses contributed to non-recovery of impugned advances and thus resulting into its write off. The Ld. Counsel for the assessee argued that the action of the Ld. AO in making the impugned disallowance and of Ld. CIT(A) in confirming the same is not inconformity with the position of law. The Ld. DR argued for dismissal of this ground of appeal on the premise that the case of the assessee is fully covered by decision of Hon'ble Coordinate Bench of this Tribunal in assessee's own case in AY-2008-09 vide ITA No.2239 / Chny / 2012 vide order dated 09.09.2022.

6.0 We have heard the rival submissions in light of material available on records. We have noted the following observations contained in the

decision of Hon'ble Coordinate Bench of this Tribunal in assessee's own case in AY-2008-09 vide ITA No.2239 / Chny / 2012 vide order dated 09.09.2022.

"….. *Disallowance of Loans Written-off 6.1 In ground No.3, the assessee seeks deduction of foreign currency loans written-off which were granted by the assessee to one of its subsidiaries Titan International Holding BV (TIHBV) for Rs.3815.45 Lacs. The interest accrued on such loans was separately claimed as bad-debts which have already been allowed.*

6.2 The assessee explained that loans advanced to TIHBV was further invested either in preference shares of TIML-London or advanced to them as loans, to meet the cost of advertisement expenditure incurred directly on assessee's behalf for various international markets where the assessee's products were sold. The objective was to ease-off the working capital requirement of the other party. The advances were to meet the cost of own advertisement expenses. It was submitted that TIML-London, a marketing arm of the assessee in international market, had accumulated losses over the years. Accordingly, part of the loan became unrecoverable and the same was written-off by the assessee in the books of accounts. The losses were stated to be incurred for earning income from foreign operations and were trade related. It was also submitted that interest on advances was offered and accepted as 'Business Income' in earlier years. The assessee submitted that interest on loans amounting to Rs.389.42 Lacs was offered to tax in financial years 2006-07 and 2007-08.

6.3 However, Ld. AO opined that most of advances were interest- bearing long-term loans. The assessee was charging interest on those loans. The loans were long term in nature and in capital field and not for any day-to-day business transactions. Therefore, such loans not given in the course of business could not be allowed as deduction. The manner in which the loans were utilized by TIHBV was not of concern to the assessee. Rather the assessee had advanced separate advertising advances to its AEs including TIML in earlier years. There was no business exigency and accordingly, the write-off of the loans was disallowed. Further, the TIHBV was integral part of assessee's group and therefore, the assessee was exercising control over it at every stage. Finally, the interest accrued for Rs.389.42 Lacs as claimed by the assessee as bad-debts written-off was allowed but the principal loan of Rs.3815.45 Lacs was disallowed. The stand of Ld. AO, upon confirmation by Ld. DRP, is in further appeal before us. 6.4 Upon due consideration of material, facts, it could be seen that the assessee is a manufacturing / trading entity and not engaged in the business of making investments. In earlier years, it has granted certain long-term loans on interest to its AE namely TIHBV which is into making investments. The loans so granted by the assessee have been further advanced to other AEs and are mostly in the shape of preference share capital which is in capital field only. The assessee has advanced separate advertising loans to its AEs which are subject matter of

determination of ALP by revenue. The loans so granted by the assessee to TIHBV have been stated to have become irrecoverable and accordingly, written-off in the books of accounts. The assessee has accrued interest on these loans in earlier years. However, even this interest has not recovered and deduction of the same has been claimed as well as allowed in terms of provisions of Sec.36(1)(vii). In the given factual matrix, we are of the considered opinion that the loans so granted by the assessee are in the capital field only since the same has been further utilized to subscribe to preference share capital which is in the nature of owner's equity. The assessee has granted independent advertising advances to AE which has separately been benchmarked by Ld. TPO and therefore, to say that the loans were for business purpose or in furtherance of business objectives would not be correct. No business expediency of advancement of loan could be demonstrated by the assessee. For the same reason, the ratio of decision of Hon'ble Supreme Court in the case of S.A.builders V/s CIT (288 ITR 1) as well the decision of Hon'ble High Court of Madras in CIT V/s Spencers & Co. Ltd. (47 Taxmann.com 55) would not apply. The decision of Chennai Tribunal in ACIT V/s W.S. Industries (India) Ltd. is factually distinguishable since the assessee's subsidiary was executing contracts on behalf of the assessee. The assessee settled the claim of subsidiaries with the bankers. The same is not the case here. The decision of Hon'ble Supreme Court in CIT V/s Mysore Sugars Co. Ltd. (46 ITR 649) is a case of business advances. Therefore, in our considered opinion, no further deduction could be allowed to assessee as rightly held by lower authorities. The corresponding grounds stand dismissed…."

7.0 We have however noted that the assessee has tried to distinguish the above decision adjudicated by the Hon'ble Coordinate Bench of this Tribunal supra in the light of additional evidences filed under Rule-29 of ITAT Rules so as to allude that the fact of the case for present appeal are distinguishable qua those of 2008-09. The assessee filed additional evidences under rule-29 qua this ground has been examined. It is the case of the assessee that the Ld. CIT(A) has not considered the facts of the case in proper perspective. It has been submitted that the additional evidences now produced are crucial for the adjudication of the ground of appeal pertaining to disallowance of doubtful advances written off qua Titan international holdings BV. It has

been submitted that even though admittedly these evidences were not produced before lower authorities, there was no willful or deliberate intent behind the same. It was urged that in the interest of justice and equity the impugned evidences be admitted and matter decided accordingly. The assessee has argued that the decision of Hon'ble Coordinate Bench of this Tribunal in ITA No.2239 supra is distinguished as the crucial documents were not placed during impugned proceedings. The Ld. DR argued that the decision taken by the Ld. CIT(A) is correct and no interference is required now more so in the light of decision of Hon'ble Coordinate Bench in assessee's own case. It was submitted that the claim was on account of loan and not of business loss. Consequently, the Ld. DR objected to admission of additional evidences arguing that it is a settled matter. The Ld. Counsel for the assessee reiterated that the consideration of additional evidences is crucial to adjudication in this matter. Be that as it may be, we are of the view that the matter concerning Write off of loans to Titan international holdings BV, in the light of additional evidences filed deserves to be objectively and comprehensively analyzed by the lower authorities. We are of the view that ends of justice would be met if the assessee is given one last opportunity to present its case and file the impugned additional evidences before the Ld.AO. The decision to remit it back to the Ld. AO is taken in

view of the fact that an Assessing Officer is the fulcrum of assessment proceedings. He possess the first right and responsibilities to examine facts of a case before arriving at his decision qua determination of taxable income in a particular case. We have noted with respectful deference the decision of Hon'ble Apex Court in the case of TIN box 249 ITR 216 on the subject matter. Accordingly, the issue of disallowance of write off loans to Titan International Holdings BV stands remitted back to the Ld. AO for readjudication de novo in accordance with law and by passing a speaking order. To the extent the order of lower authorities on this issue stands set aside. The Ld. AO shall give opportunities of being heard to the assesse and it shall be bounden upon the assesse to comply with the notices issued by the Ld. AO. Any non-compliance on the part of the assesse can be adversely viewed. **Accordingly, the grounds of appeal No.3 raised by the assessee is therefore allowed for statistical purposes.**

8.0 During the course of present appeal, the appellant has filed an additional ground vide ground of appeal number-4. The Ld. Counsel of the assessee however submitted that the assessee would not like to press the same. **Accordingly the additional ground of appeal number-4. raised by the assesse is dismissed as withdrawn.**

9.0 In the result the appeal raised by the assessee is partly allowed.

Order pronounced on 4th , December-2024 at Chennai.

Sd/-	**Sd/-**
(यस यस विश्वनेत्र रवि)	**(श्री अमिताभ शुक्ला)**
(SS Viswanethra Ravi)	**(Amitabh Shukla)**
न्यायिक सदस्य / Judicial Member	**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 4th , December-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF